
By: Delegates Morhaim and Boutin, Boutin, Hurson, Hammen, Oaks, Murray, Benson, Mandel, Goldwater, Nathan-Pulliam, Hubbard, Rosenberg, Pendergrass, and V. Turner

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CHAPTER _____

1 AN ACT concerning

2 **Advance Directive Information Availability Act**

3 FOR the purpose of requiring the Department of Health and Mental Hygiene, in
4 consultation with the Office of the Attorney General to develop a form that
5 provides certain information relating to advance directives; requiring the
6 Department, in consultation with the Office of the Attorney General, to provide
7 certain information on an advance directive to an individual upon application to
8 certain assistance programs develop and implement a plan for making certain
9 information relating to advance directives widely available, and to make certain
10 information on an advance ~~directive~~ directives available in each local health
11 department and local department of social services; requiring the Department to
12 implement a certain plan on or before a certain date; requiring the Office of the
13 Attorney General to consult with certain interested parties regarding a certain
14 plan and development of the advance directive information form; requiring the
15 Motor Vehicle Administration to provide certain information on an advance
16 directive relating to advance directives to an applicant for a driver's license or
17 identification card, and to provide a method by which an individual can
18 designate on the driver's license or identification card that the individual has an
19 advance directive; requiring an insurance carrier to provide certain information
20 on an advance directive relating to advance directives in the carrier's marketing
21 and open enrollment materials and member publications under certain
22 circumstances; requiring information on an advance directive to providing that
23 the information relating to advance directives may include certain written
24 statements; requiring the Maryland Health Care Commission to include certain
25 data on advance directives in a certain annual evaluation; requiring the
26 Department of Health and Mental Hygiene to make a certain report to certain

1 committees of the General Assembly on or before a certain date; ~~requiring the~~
2 ~~Motor Vehicle Administration to make a certain report to certain committees of~~
3 ~~the General Assembly on or before a certain date~~; defining certain terms; and
4 generally relating to increasing the availability of information on advance
5 directives.

6 BY repealing and reenacting, without amendments,
7 Article - Health - General
8 Section 5-601(a) and (b) and 19-134(c)
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2003 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article - Health - General
13 Section 5-615 ~~and 19-134(c)~~
14 Annotated Code of Maryland
15 (2000 Replacement Volume and 2003 Supplement)

16 BY adding to
17 Article - Health - General
18 Section 15-109.1
19 Annotated Code of Maryland
20 (2000 Replacement Volume and 2003 Supplement)

21 BY adding to
22 Article - Insurance
23 Section 15-122.1
24 Annotated Code of Maryland
25 (2002 Replacement Volume and 2003 Supplement)

26 BY adding to
27 Article - Transportation
28 Section 12-303.1
29 Annotated Code of Maryland
30 (2002 Replacement Volume and 2003 Supplement)

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
32 MARYLAND, That the Laws of Maryland read as follows:

33 **Article - Health - General**

34 5-601.

35 (a) In this subtitle the following words have the meanings indicated.

1 (b) "Advance directive" means:

2 (1) A witnessed written document, voluntarily executed by the declarant
3 in accordance with the requirements of this subtitle; or

4 (2) A witnessed oral statement, made by the declarant in accordance
5 with the provisions of this subtitle.

6 5-615.

7 (a) In this section, "health care facility" has the meaning stated in § 19-114 of
8 this article.

9 (b) Each health care facility shall provide each individual on admittance to the
10 facility information concerning the rights of the individual to make decisions
11 concerning health care, including the right to accept or refuse treatment, and the
12 right to make an advance directive, including a living will.

13 (C) (1) ~~IN THIS SUBSECTION, "INFORMATION ON AN ADVANCE DIRECTIVE"~~
14 ~~INCLUDES THE DEPARTMENT, IN CONSULTATION WITH THE OFFICE OF THE~~
15 ATTORNEY GENERAL, SHALL DEVELOP A FORM THAT PROVIDES INFORMATION
16 RELATING TO ADVANCE DIRECTIVES, WHICH MAY INCLUDE:

17 (I) WRITTEN STATEMENTS INFORMING AN INDIVIDUAL THAT AN
18 ADVANCE DIRECTIVE:

19 1. IS A USEFUL, LEGAL, AND WELL-ESTABLISHED WAY FOR
20 AN INDIVIDUAL TO DIRECT MEDICAL CARE;

21 2. ALLOWS AN INDIVIDUAL TO SPECIFY THE MEDICAL CARE
22 THAT THE INDIVIDUAL WILL RECEIVE AND CAN ALLEVIATE CONFLICT AMONG
23 FAMILY MEMBERS AND HEALTH CARE PROVIDERS;

24 3. CAN ENSURE THAT AN INDIVIDUAL'S RELIGIOUS BELIEFS
25 ARE CONSIDERED WHEN DIRECTING MEDICAL CARE;

26 4. IS MOST EFFECTIVE IF COMPLETED IN CONSULTATION
27 WITH FAMILY MEMBERS, OR LEGAL AND RELIGIOUS ADVISORS, IF AN INDIVIDUAL
28 DESIRES;

29 5. CAN BE REVOKED OR CHANGED AT ANY TIME;

30 6. IS AVAILABLE IN MANY FORMS, INCLUDING MODEL
31 FORMS DEVELOPED BY RELIGIOUS ORGANIZATIONS, ESTATE PLANNERS, AND
32 LAWYERS;

33 7. DOES NOT HAVE TO BE ON ANY SPECIFIC FORM AND CAN
34 BE PERSONALIZED; AND

35 8. IF COMPLETED, SHOULD BE COPIED FOR AN INDIVIDUAL'S
36 FAMILY MEMBERS, PHYSICIANS, AND LEGAL ADVISORS; AND

1 (II) THE FOLLOWING WRITTEN STATEMENTS:

2 1. THAT AN INDIVIDUAL SHOULD DISCUSS THE
3 APPOINTMENT OF A HEALTH CARE AGENT WITH THE POTENTIAL APPOINTEE;

4 2. THAT ADVANCE DIRECTIVES ARE FOR INDIVIDUALS OF
5 ALL AGES, ~~AND THAT THE MOST NOTEWORTHY CASES IN ADVANCE DIRECTIVE LAW~~
6 ~~INVOLVE INDIVIDUALS UNDER AGE 30;~~

7 3. IN THE ABSENCE OF AN APPOINTED HEALTH CARE
8 AGENT, THE NEXT OF KIN MAKE AN INDIVIDUAL'S HEALTH CARE DECISIONS WHEN
9 THE INDIVIDUAL IS INCAPABLE OF MAKING THOSE DECISIONS; AND

10 4. THAT AN INDIVIDUAL IS NOT REQUIRED TO COMPLETE AN
11 ADVANCE DIRECTIVE.

12 (2) ~~INFORMATION ON AN ADVANCE DIRECTIVE~~ THE FORM DEVELOPED
13 BY THE DEPARTMENT UNDER THIS SUBSECTION SHALL BE PROVIDED BY:

14 (I) THE DEPARTMENT, IN ACCORDANCE WITH § 15-109.1 OF THIS
15 ARTICLE;

16 (II) THE MOTOR VEHICLE ADMINISTRATION, IN ACCORDANCE WITH
17 § 12-303.1 OF THE TRANSPORTATION ARTICLE; AND

18 (III) A CARRIER, IN ACCORDANCE WITH § 15-122.1 OF THE
19 INSURANCE ARTICLE.

20 15-109.1.

21 (A) ~~IN THIS SECTION, "INFORMATION ON AN ADVANCED DIRECTIVE" HAS THE~~
22 ~~MEANING STATED IN § 5-615(C) OF THIS ARTICLE.~~

23 ~~(B)~~ THE DEPARTMENT, IN CONSULTATION WITH THE OFFICE OF THE
24 ATTORNEY GENERAL, SHALL:

25 ~~(1)~~ PROVIDE INFORMATION ON AN ADVANCE DIRECTIVE TO AN
26 INDIVIDUAL ON APPLICATION TO THE:

27 ~~(I)~~ PROGRAM;

28 ~~(II)~~ MARYLAND PHARMACY ASSISTANCE PROGRAM;

29 ~~(III)~~ MARYLAND PRESCRIPTION DRUG PROGRAM; AND

30 ~~(IV)~~ ANY OTHER ASSISTANCE PROGRAM OFFERED BY THE
31 DEPARTMENT.

32 (1) DEVELOP AND IMPLEMENT A PLAN FOR MAKING THE ADVANCE
33 DIRECTIVE INFORMATION FORM DEVELOPED UNDER § 5-615 OF THIS ARTICLE
34 WIDELY AVAILABLE; AND

1 (2) ~~MAKE INFORMATION ON AN ADVANCE DIRECTIVE THE FORM~~
2 ~~DESCRIBED IN ITEM (1) OF THIS SUBSECTION AVAILABLE IN A CONSPICUOUS~~
3 ~~LOCATION IN EACH LOCAL HEALTH DEPARTMENT, AND IN EACH LOCAL~~
4 ~~DEPARTMENT OF SOCIAL SERVICES, AND IN COMMUNITY HEALTH CENTERS.~~

5 (B) ~~THE DEPARTMENT SHALL IMPLEMENT THE PLAN ON OR BEFORE JUNE 30,~~
6 ~~2005.~~

7 (C) ~~DURING THE DEVELOPMENT OF THE PLAN UNDER SUBSECTION (A) OF~~
8 ~~THIS SECTION AND THE FORM UNDER § 5-615 OF THIS ARTICLE, THE OFFICE OF THE~~
9 ~~ATTORNEY GENERAL SHALL CONSULT WITH ANY INTERESTED PARTY INCLUDING~~
10 ~~THE STATE ADVISORY COUNCIL ON QUALITY CARE AT THE END OF LIFE.~~

11 19-134.

12 (c) (1) The Commission shall:

13 (i) Establish and implement a system to comparatively evaluate
14 the quality of care outcomes and performance measurements of health maintenance
15 organization benefit plans and services on an objective basis; and

16 (ii) Annually publish the summary findings of the evaluation.

17 (2) The purpose of a comparable performance measurement system
18 established under this subsection is to assist health maintenance organization benefit
19 plans to improve the quality of care provided by establishing a common set of
20 performance measurements and disseminating the findings of the performance
21 measurements to health maintenance organizations and interested parties.

22 (3) The system, where appropriate, shall solicit performance information
23 from enrollees of health maintenance organizations.

24 (4) (i) The Commission shall adopt regulations to establish the system
25 of evaluation provided under this subsection.

26 (ii) Before adopting regulations to implement an evaluation system
27 under this subsection, the Commission shall consider any recommendations of the
28 quality of care subcommittee of the Group Health Association of America and the
29 National Committee for Quality Assurance.

30 (5) The Commission may contract with a private, nonprofit entity to
31 implement the system required under this subsection provided that the entity is not
32 an insurer.

33 (6) The annual evaluation summary required under paragraph (1) of this
34 subsection shall:

35 (i) Include a summary of the Drug Formulary Accreditation
36 Standards of the National Committee for Quality Assurance (NCQA); {and}

1 (ii) Indicate whether the formulary development process of each
 2 health maintenance organization evaluated complies with the National Committee
 3 for Quality Assurance (NCQA) accreditation standards; ~~AND~~

4 ~~(iii) INCLUDE DATA ON THE NUMBER OF ADULTS IN EACH HEALTH~~
 5 ~~MAINTENANCE ORGANIZATION EVALUATED WHO:~~

6 ~~1. ARE PROVIDED INFORMATION ON AN ADVANCE~~
 7 ~~DIRECTIVE, IN ACCORDANCE WITH § 5-615(C) OF THE HEALTH - GENERAL ARTICLE;~~
 8 ~~AND~~

9 ~~2. HAVE COMPLETED AN ADVANCE DIRECTIVE.~~

10 **Article - Insurance**

11 15-122.1.

12 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 13 INDICATED.

14 (2) "ADVANCE DIRECTIVE" HAS THE MEANING STATED IN § 5-601 OF THE
 15 HEALTH - GENERAL ARTICLE.

16 (3) (I) "CARRIER" MEANS:

17 ~~(⊕)~~ 1. AN INSURER;

18 ~~(⊕)~~ 2. A NONPROFIT HEALTH SERVICE PLAN;

19 ~~(⊕)~~ 3. A HEALTH MAINTENANCE ORGANIZATION; AND

20 ~~(IV)~~ A MANAGED CARE ORGANIZATION; AND

21 ~~(V)~~ 4. ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT
 22 PLANS SUBJECT TO REGULATION BY THE STATE.

23 (II) "CARRIER" DOES NOT INCLUDE A MANAGED CARE
 24 ORGANIZATION.

25 ~~(4)~~ "INFORMATION ON AN ADVANCE DIRECTIVE" HAS THE MEANING
 26 STATED IN § 5-615(C) OF THE HEALTH - GENERAL ARTICLE.

27 (B) A CARRIER SHALL PROVIDE ~~INFORMATION ON AN~~ THE ADVANCE
 28 DIRECTIVE INFORMATION FORM DEVELOPED UNDER § 5-615 OF THE HEALTH -
 29 GENERAL ARTICLE IN THE CARRIER'S ~~MARKETING AND~~ OPEN ENROLLMENT
 30 MATERIALS AND MEMBER PUBLICATIONS AT THE REQUEST OF A MEMBER.

1

Article - Transportation

2 12-303.1.

3 (A) ~~(1)~~ IN THIS SECTION ~~THE FOLLOWING WORDS HAVE THE MEANINGS~~
4 ~~INDICATED.~~

5 ~~(2)~~ "ADVANCE DIRECTIVE" HAS THE MEANING STATED IN § 5-601 OF THE
6 HEALTH - GENERAL ARTICLE.

7 ~~(3)~~ "INFORMATION ON AN ADVANCE DIRECTIVE" HAS THE MEANING
8 ~~STATED IN § 5-615(C) OF THE HEALTH - GENERAL ARTICLE.~~

9 (B) THE ADMINISTRATION SHALL PROVIDE FOR A METHOD BY WHICH AN
10 APPLICANT FOR A DRIVER'S LICENSE OR IDENTIFICATION CARD:

11 ~~(1)~~ IS PROVIDED ~~INFORMATION ON AN~~ THE ADVANCE DIRECTIVE; ~~AND~~

12 ~~(2)~~ MAY DESIGNATE THAT THE APPLICANT HAS AN ADVANCE DIRECTIVE
13 INFORMATION FORM DEVELOPED UNDER § 5-615 OF THE HEALTH - GENERAL
14 ARTICLE.

15 ~~(C)~~ ~~IF THE APPLICANT DESIGNATES THAT THE APPLICANT HAS AN ADVANCE~~
16 ~~DIRECTIVE, THE ADMINISTRATION SHALL MAKE A NOTATION THAT THE APPLICANT~~
17 ~~HAS AN ADVANCE DIRECTIVE ON THE DRIVER'S LICENSE OR IDENTIFICATION CARD~~
18 ~~ISSUED TO THE APPLICANT.~~

19 ~~(D)~~ ~~AT THE TIME THE APPLICANT AUTHORIZES THE ADVANCE DIRECTIVE~~
20 ~~NOTATION ON THE DRIVER'S LICENSE OR IDENTIFICATION CARD, THE~~
21 ~~ADMINISTRATION SHALL NOTIFY THE APPLICANT THAT THE ADVANCE DIRECTIVE~~
22 ~~NOTATION CAN BE REMOVED ONLY ON WRITTEN NOTICE TO THE ADMINISTRATION.~~

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
24 Health and Mental Hygiene ~~and the Motor Vehicle Administration each~~ shall report
25 to the Senate Education, Health, and Environmental Affairs Committee and the
26 House Health and Government Operations Committee on or before October 1, 2005,
27 in accordance with § 2-1246 of the State Government Article, on the implementation
28 of this Act, by the Department and the Administration, respectively.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2004.

